

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

BRIAN HOLM,

Plaintiff,

vs.

CRYSTAL BEAVER, P.R. FOR THE
ESTATE OF BRIAN BEAVER, HER
HEIRS, EXECUTORS,
SUCCESSORS AND ASSIGNS,

Defendants.

CV 18-81-H-DLC

ORDER

Before the Court is the Findings & Recommendations of United States Magistrate Judge John Johnston. (Doc. 21.) Judge Johnston recommends dismissing this matter without prejudice. No party or nonparty representative objects.

Absent objection, the Court reviews Judge Johnston's findings and recommendation for clear error. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error is "significantly deferential" and exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

The Court finds no clear error here. Judge Johnston bases his recommendation on Mr. Holm's failure to serve Defendant Beaver after she refused to waive service. As Judge Johnston notes, an in forma pauperis plaintiff must request that the United States Marshals Service serve his complaint to impute the responsibility of service to the U.S. Marshals. *Boudette v. Barnette*, 923 F.2d 754, 757 (9th Cir. 1991). Nothing in the record suggests that Mr. Holm made such a request. Therefore, because Mr. Holm failed to serve Defendant Beaver pursuant to Federal Rule of Civil Procedure 4(m), the Court agrees that dismissal without prejudice is proper.

Additionally, the Court notes that Mr. Holm has passed away. (Doc. 21 at 3.) The record is devoid of information as to the existence of nonparty representatives who may have an interest in substituting for Mr. Holm in this action. *See* Fed. R. Civ. P. 25(a). The Court agrees with Judge Johnston's assessment that Mr. Holm's death, coupled with his failure to serve any defendant before he died, leaves dismissal without prejudice as the Court's only option.

Accordingly, IT IS ORDERED that the Court ADOPTS Judge Johnston's Findings and Recommendations (Doc. 21) IN FULL. Consequently, IT IS ORDERED that this matter is DISMISSED WITHOUT PREJUDICE.

DATED this 3rd day of August, 2020.



Dana L. Christensen
Dana L. Christensen, District Judge
United States District Court